

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Family Foster Care
License of Jeanette Arnold

FINDINGS OF FACT,
CONCLUSIONS,
AND RECOMMENDATION

This matter came on for hearing before Administrative Law Judge Beverly Jones Heydinger at 1:30 p.m. on September 25, 2003, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN. Theresa Meinholz Gray, Assistant Attorney General, 445 Minnesota Street, Suite 900, Saint Paul, MN 55101-2127, appeared on behalf of the Department of Human Services. Jeanette Arnold did not appear in person or by counsel.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUES

1. Did the Licensee lack the personal qualities essential to being a family foster care license holder by failing to provide a child with proper care and medical attention?
2. Did the Licensee lack the personal qualities essential to being a family foster care license holder by engaging in negative parenting, intolerance and punitive discipline of a child?
3. Did the Licensee inflict psychological abuse on a child?
4. Did the Licensee fail to cooperate with PATH, a private placing agency?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. This matter was originally scheduled for hearing on February 21, 2003, pursuant to Notice and Order for Hearing dated January 3, 2003.
2. A protective order was issued on February 4, 2003.
3. At the request of the Licensee's attorney at that time, P. Arthur Moe, the matter was continued to April 29, 2003.^[1]
4. On April 21 through April 24, 2003, the parties exchanged lists of proposed exhibits and witnesses for the hearing.^[2]
5. On April 28, 2003, Mr. Moe requested another continuance on behalf of the Licensee because her personal circumstances precluded her from assisting in the preparation for hearing. The matter was continued to June 16, 2003.^[3]
6. On June 11, 2003, Mr. Moe notified the Administrative Law Judge that he was withdrawing from representation of the Licensee. Because her personal circumstances still precluded preparation, he requested an additional continuance on her behalf. On June 12, 2003, a telephone conference was held with Ms. Gray and Ms. Arnold. The matter was continued to September 25, 2003. Ms. Arnold confirmed that an additional three months continuance would be sufficient.^[4]
7. On September 16, 2003, a telephone conference was held with Ms. Gray and Ms. Arnold. Ms. Arnold confirmed that she wanted to go ahead with the hearing. Following the telephone conference, the Administrative Law Judge mailed a letter confirming the hearing on September 25, 2003, and forwarding a map and additional materials to Ms. Arnold.^[5]

8. The Licensee did not appear at the hearing, did not obtain the Administrative Law Judge's approval to be absent from the hearing, and did not request an additional continuance.

9. The Notice of and Order for Hearing states, in part:

Failure of the parties to appear at the prehearing conference or hearing in this matter, or failure to comply with any order of the Administrative Law Judge, may result in a finding of default, the allegations set out in this Notice being taken as true or the issues set out being deemed proved, and the revocation of the Family Foster Care license upheld.

10. Because the Licensee failed to appear at the hearing, she is in default.

11. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice and Order for Hearing are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services are authorized to consider revocation of the Licensee's Family Foster Care license, pursuant to Minn. Stat. §§ 245A.07, subd. 3(a), and 14.50.

2. The Licensee received due, proper and timely notice of the charges against her, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the issues set out in the Notice and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Licensee is in default as a result of her failure to appear at the hearing without the consent of the Administrative Law Judge.

6. The Department's allegation that the Licensee failed to provide proper care and medical attention to a child, does not constitute a violation of Minn. R. 9545.0090 (B)(15).

7. The Licensee engaged in negative parenting, intolerance and punitive discipline of a child, in violation of Minn. R. 9545.0090 (B)(7), and thus, she lacks the

personal qualities essential to being a family foster care license holder. The Department failed to state a basis for the alleged violation of Minn. R. 9545.0090 (B)(2).

8. The Licensee inflicted psychological abuse, in violation of Minn. R. 9545.0160.

9. The Licensee failed to cooperate with PATH, a private placing agency, in violation of Minn. R. 9545.0100.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Human Services revoke Jeanette Arnold's family foster care license, and that the Protective Order issued on February 4, 2003 remain in effect.

Dated this 2nd day of October, 2003.

S/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Default (one tape)

MEMORANDUM

The Licensee was aware of the proceedings against her. She was granted several continuances, and she confirmed that she wished to go ahead with the hearing. Nonetheless, she failed to appear at the hearing or to offer any explanation for her absence. Under the circumstances, it is appropriate to find her in default.

However, the issues as stated in the Notice and Order for Hearing do not support two of the alleged violations. There was no stated issue that tied to violations of Minn. R. 9545.0900 (B)(2) or (B15).

The Notice and Order for Hearing included no specific factual allegations. Ms. Arnold had counsel from February through June, 2003, and exhibit and witness lists were exchanged. At no time was it suggested that Ms. Arnold was unaware of the specific allegations against her. Nonetheless, the better practice would be to set out the factual basis for the Department's action, either in the Notice and Order for Hearing itself, or in an attached exhibit, so that, in the event of a default, the factual allegations are clear.

BJH

^[1] Order for Continuance, February 24, 2003.

^[2] Documents included in the file.

^[3] Telephone conversation with Ms. Gray and Mr. Moe on April 28, 2003; Letter to Parties from Administrative Law Judge, dated May 28, 2003.

^[4] Order for Continuance, June 13, 2003.

^[5] Letter to Parties from Administrative Law Judge, dated September 18, 2003.